IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4570 OF 2007
AND
WRIT PETITION NO. 4825 OF 2007.

Vishwanath R. Panvelkar (W.P.No.4570/07
Dattatray Narayan Joshi & Ors.(W.P.No.4825/07) .....Petitioners
V/s
natwarlal Tulsidas Mehta & Ors. ....Respondent.

Mr.A.N.Helekar, Adv. For the petitioner in W.P.No.4570/07 and for respondent No.6 in W.P.No.4825/07.

Mr.Ramakant B.Paranjpe, Adv. For respondent Nos.1 to 5 in both the writ petitions.

Mr.Mandar Limaye, Adv. For respondent Nos.6 to 8 in W.P.No.4570/07 and for the petitioner in W.P.No.4825/07.

CORAM: A.P.DESHPANDE, J.
27/8/07

PC:

The petitioner in writ petition No.4570/07 is the original defendant No.5 whereas the petitioners in other writ petition are original defendant Nos. 1 to 3. The plaintiff had instituted a suit for specific performance of the contract and had also claimed possession. The suit was filed in the year 2000. The present petitioners had engaged one advocate Mrs.Sarangdhar for conducting the suit on their behalf. The counsel had filed power and the record reveals that on dozens of occasion application was moved by the counsel seeking time to file

written statement. Initially adjournments were granted without any condition. However thereafter adjournments were granted subject to payment of costs. Not only that the costs was not paid but even written statement was not filed at any point of time. Counsel seems to have attended the case upto 11th October, 2001. However thereafter it is stated that the counsel missed the case and came to know about passing of ex-parte decree sometime in May, 2005, when the suit had been decreed on 3.5.2003. The present petitioners moved an application for setting aside ex-parte decree and as there was delay of about 2 years, 3 months and 16 days applications for condonation of delay came to be moved by the petitioners in both the petitions. Rejection of said applications seeking condonation of delay has given rise to filing of these two writ petitions. The trial Court has categorically found the present petitioners to be totally negligent in defending the suit. The present petitioners contended in the application for condonation of delay that the counsel engaged by them had instructed them not to attend the Court and that she would be intimating further dates in the matter and the petitioners can attend as and when their presence would be found necessary. The case of the petitioners in writ petition No.4570/07 is that the counsel intimated the date to them sometime in September, 2005. Hence the petitioner ought not be made to suffer for the fault or latches on the part of the Advocate. Whereas it is the case of the petitioners in

Writ Petition No.4825/07 that they have been repeatedly inquiring from the counsel for the date and the counsel went on assuring that as and when their presence is required they will be informed about the date. Thus in substance for a period of four years neither the petitioners bothered to find out the date or progress in the matter nor was the counsel diligent in keeping track of the suit. The said contention and other grounds were also pressed in service such as illness of petitioners etc. The trial Court on appreciating the evidence on record and noticing the discrepancies in the affidavit filed by the advocate has rejected the application for condonation of delay. Perused the order impugned. The trial Court has taken possible view of the matter. It does not call for interference in exercise of writ jurisdiction under article 227 of the Constitution of India. Hence both writ petitions are summarily dismissed.

27.8.07